IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

CRL.A.No. 146 of 2004(C)

SC.7/1997 of ADDL. SESSIONS COURT (ADHOC)-II, PALAKKAD
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PETITIONER/APPELLANT:

THANGALKUTTY @ BAPPU,
CONVICT NO.8914, C.PRISON, KANNUR.

BY ADV. SRI.DEEPU THANKAN

RESPONDENT:

STATE OF KERALA.

BY PUBLIC PROSECUTOR SRI.NOBLE MATHEW

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 23/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & V.GIRI, JJ.

CRL.A.NO.146 OF 2004 ()

Dated this the 23rd day of August, 2007

J U D G M E N T

KOSHY,J.

Appellant was convicted and sentenced for life imprisonment for offences punishable under Section 302 of the Indian Penal Code for committing murder of one Shahul Hameed. Both accused and deceased were living in the Laksham Veedu Colony. Deceased was living along with his wife PW6, mother PW5, father PW1 and his sister PW4 in the same house. Accused was residing in the locality along with his wife, his mother, his father etc. Both accused and deceased were fish traders.

2. According to the prosecution, on 2.7.1996, at about 5.30 p.m., PW7, neighbour of the deceased, the accused and his sister CW23 Selma quarrelled on the ground that, on 1.7.1996 in the evening, PW7 and one Rehmath made fun of Selma, while she was cleaning her courtyard. In the midst of

the quarrel, accused ridiculed all the women folk in the colony with abusive words. Knowing about that from PW2, at about 9.30 p.m., the deceased went towards the house of the accused and called him. Accused came out and a wordy quarrel and push and pull was followed. PW2 took the accused to his house and left him there. Deceased was lifting up his bicycle to go home. Suddenly accused came there with the intention to kill him and stabbed the deceased. Deceased sat on the ground to catch hold of him. After dropping the dagger in his courtyard, he ran away towards the west. Thereafter PW2 and others took the deceased to Medical College Hospital, Trichur. Before reaching the hospital he succumbed to his injury.

3. PW1, father of the deceased gave F.I.Statement. According to him, he came back from the shop only by 9 0'clock and he saw women crying and he went there. Then he saw the accused was stabbing the deceased.

So it is his clear case that the stab injury was caused during the quarrel, and PWs.2 and 3 took the deceased to the hospital and accused ran away. In cross examination, he also stated that when he came there, they were quarreling and the entire incident occurred within ten minutes. He deposed as follows:

In re-examination he reiterated the same that only during commotion, incident occurred. PW1 has no case that after PW2 took the accused to his house, accused came from behind and stabbed.

PW2 is a close friend of the deceased. He also deposed regarding the earlier incident of accused abusing the women folk by abusive words and according to him, he asked the accused why he was abusing the women folk in the colony with abusive words and accused did not tell anything. Then he saw

deceased Shahul Hameed going in a cycle. He stated that he was going to question the accused regarding the incident and it should be questioned immediately and he went there and called out the accused and there was pull and push occurred. PW2 separated them. Then he took the accused in his house and while he and deceased tried to lift the cycle accused came there and stabbed deceased in the neck and he ran away. He along with PW3 took the injured to the hospital. He also stated that the relatives of both accused and deceased were present there at the time of incident. He also stated that when deceased questioned the accused, PW3 was not there and only after the incident PW3 came. According to PW2, he has seen PW1.

4. PW3 deposed that at the time of incident, large number of people and close relatives of both accused and deceased were there. He stated that when he came after work, PW2 came to his house and stated that accused called abusive words to all the women folk of the colony. Then he told him that he would ask him in the morning. Then after 9 p.m. he heard a sound calling out accused from his house. Again he heard the sound. Deceased asking the accused to come out

from the house. Then accused came out. Then the quarrel started. He also stated that he and PW2 tried to separate them. Then he fell on the fence and at that time he saw accused stabbing the deceased. He deposed as follows:

PW3 has no case that PW2 took the accused in the house. Evidence of PW3 shows that deceased, PWs.2 and 3 went to the house of the accused called him outside and there was quarrel regarding the earlier incident and called abusive words on the deceased and quarrel started and accused stabbed the deceased. PW3 was not declared hostile and prosecution is bound by the statement. In cross examination also he stated that during the struggle only the stab injury was done.

5. PW4 is the sister of the deceased. She deposed that she came there hearing the quarrel and she saw accused

stabbing the deceased and running away. PW5 mother of the deceased and PW6 wife of the deceased deposed in the same manner. She further stated that she saw her husband lying with bleeding injury and he told her that

PW7 narrated the incident regarding the quarrel between herself and CW23 sister of the accused and regarding shouting of abusive words by the accused. MO1 knife was seized from the place of occurrence at the time of taking Ext.P2 scene mahazar even though no one specifically stated that accused leave the MO1 and ran away.

6. PW10 Assistant Police Surgeon conducted post mortem and issued Ext.P4 post mortem certificate. Ante-mortem injuries stated are as follows:

> 1. Incised penetrating wound 5 x 1 cm, vertical on the front of left side of neck with its upper square cut end 5.5 cm to the left of mid line and lower sharp cut end 1.5 cm above the left collar bone the wound was directed backwards downwards and to the right. It had cut the muscles, of the left side of neck and subclavian vein on left side. It had cut the trachea on its posterior aspect and entered the right chest cavity. It pierced the upper lobe of right lung (0.8 x 0.2 x 0.5 cm). There was 200 ml of fluid blood in the right chest cavity. The wound has a total minimum depth of 9 cm.

2. Incised wound 2 x 0.3 x 1 cm horizontally placed on the palmer aspect of right hand between thumb and index finger 1 cm below the root of thumb.

According to the doctor, cause of death was due to the stab injuries sustained in the neck and he also stated that MO1 weapon and injury no.1 was sufficient in the ordinary course of nature to cause death. Injury no.2 can be caused during the attempt when the persons defended as it could be a defence pull. Serious injury is on the neck on the left side. This injury can be caused from the person from the back side. But according to the doctor, probably that injury can be caused from the front side. Ext.P10 Chemical examination certificate shows that MO1 contained human blood. All these evidences clearly show that deceased, PWs.2 and 3 went to the house of the accused called him out to question his previous conduct of abusing women and there was a quarrel and push and pull started and during the sudden fall accused inflicted injury on the deceased. There was only one stab injury. Fight started suddenly when the deceased and friends (Pws.2 and 3) went to the house of the accused for questioning about the previous incident. Accused was inside his house. He was called out and

when he came out he was questioned and sudden fight occurred. Accused was alone whereas deceased was supported by PWs.2 and 3. It may be a case of private defence also. In any event, it occurred in a sudden fight and accused did not act in a cruel and unusual manner. Hence Exception 4 of Section 300 of I.P.C. is attracted. In the heat of passion it occurred and there is only one stab injury and it cannot be stated that there is a cold-blooded preplanned murder. Prosecution witnesses itself stated that deceased and accused were friends earlier. In these circumstances, we are of the opinion that conviction under Section 302 of the I.P.C. is not proper. He can be convicted under Section 304 Part II of the I.P.C. and we sentence him for six years Rigorous Imprisonment under Section 304 Part II of I.P.C. He will be entitled to the right of set off. Accordingly this appeal is partly allowed.

J.B.KOSHY, JUDGE

V.GIRI, JUDGE

prp

J.B.KOSHY & V.GIRI, JJ.

CRL.A.NO.146 OF 2004 ()

J U D G M E N T

23rd August, 2007